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No. 84-1105

In the Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF NEW MEXICO, PETITIONER

v.

JAMES A. BAKER III, SECRETARY OF THE TREASURY OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly concluded that the instant action is one seeking essentially monetary relief against the United States in an amount in excess of $10,000, and hence that jurisdiction over the action lies in the Claims Court and not in the district court.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is reported at 745 F.2d 1318. The memorandum of the district court (Pet. App. 11a-22a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 9, 1984. The petition for a writ of certiorari was filed on January 7, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Mineral Lands Leasing Act of 1920, the Secretary of the Interior is authorized to lease federally-owned lands containing oil deposits to third parties for the purpose of extracting oil. Act of Feb. 25, 1920, ch. 85, § 35, 41 Stat. 450 (currently codified at 30 U.S.C. 191). The Act

directs that "[a]ll money received from * * * royalties * * * and rentals of the public lands" shall be paid into the United States Treasury and thereafter be apportioned according to formula (30 U.S.C. 191). Under that apportionment formula (with certain exceptions applicable to Alaska), the Secretary of the Treasury is directed to pay 50% of the royalties to the state "within the boundaries of which the leased land * * * are * * * located," to pay 40% of the royalties to a Reclamation Fund established by Congress in 1902, and to credit 10% of the royalties to miscellaneous receipts (30 U.S.C. 191).

On April 2, 1980, Congress enacted the Crude Oil Windfall Profit Tax Act, Tit. I, Pub. L. No. 96-233, 94 Stat. 230 *et seq.* (currently codified at 26 U.S.C. 4986 *et seq.*). That statute imposes an excise tax on windfall profits realized from the production of domestic crude oil after February 29, 1980. The United States is subject to tax on windfall profits derived from oil removed from federally-owned lands (26 U.S.C. 4986(b), 4996(a)). During congressional consideration of the windfall profits legislation, senators from several oil-producing states (including New Mexico) attempted to prevent oil in which the United States owns an economic interest from being subjected to the tax, expressing concern that the amounts the states would receive under the Mineral Act would thereby be reduced. See 125 Cong. Rec. 36290, 36491 (1979); 126 Cong. Rec. 5839-5840, 6062-6063, 6193-6194, 6658 (1980). They were unsuccessful. Remarks made during the floor debate by Senator Long, the Chairman of the Senate Finance Committee, and other oil-state senators evidenced their understanding that the statute as enacted would subject the states' 50% share of federal oil royalties to diminution by the windfall profit tax. See 126 Cong. Rec. 2623-2624, 2825-2826, 3030-3031 (1980).

2. Reading the relevant provisions of the above-described statutes together in light of the latter's legislative history, the Secretary of the Treasury determined that the windfall profit tax should be applied against the federal government's gross royalties from federal oil-producing lands, *before* making the apportionment called for by the Mineral Act. As a result, the burden of the tax was borne ratably by the states' 50% share, the Reclamation Fund's 40% share, and the general revenue's 10% share of the royalties. Since the passage of the Windfall Profit Tax Act in 1980, the Secretary has consistently paid to the states oil royalty distributions that reflected their 50% share of the royalties diminished by a ratable share of the tax. Pet. App. 2a; R. 12-13.

On December 17, 1980, the Attorney General of New Mexico protested the Secretary's computation. He contended that the Mineral Act required the Treasury to remit to the states 50% of *gross* federal oil royalties, undiminished by any windfall profit tax, and that the entire burden of the tax should thus be borne by the United States (R. 14-15). The Secretary denied the protest. Under New Mexico's position, he pointed out, the imposition of the windfall profit tax on federal royalty income, contrary to Congress's intent, would raise no net revenue, since an increase in federal tax revenue would be precisely offset by a decline in federal royalty revenue. And the State's position, he noted, would make it impossible for him to apportion 40% of the royalties to the Reclamation Fund and 10% of the royalties to miscellaneous Treasury receipts, as the Mineral Act requires.

3. Following the denial of its protest, the State brought this action against the Secretary in the United States District Court for the District of New Mexico. The State framed its complaint to seek (1) a declaratory judgment that the Mineral Act entitles it to receive 50% of royalties from

federally-owned, oil-producing lands in New Mexico undiminished by any windfall profit tax; and (2) an order compelling the Secretary to pay over to the State the amount of windfall profit tax (plus interest) alleged to have been withheld illegally, and directing him to cease withholding such amounts in the future.

The district court characterized the action as one "seeking declaratory, mandamus and specific relief" and took jurisdiction under 28 U.S.C. 1331, 1361, 2201 and 5 U.S.C. 702 (Pet. App. 15a). The court seemed to recognize that, if the action were characterized as "a suit for money damages," exclusive jurisdiction would lie in the Claims Court (*id.* at 14a-15a). But the court reasoned that the suit requested not money damages but "specific relief" in the form of "the very monies which were used by the United States to pay the tax rather than distributed to the State" (*id.* at 14a). The fact that New Mexico claimed money held by the Treasury did not mean that "the requested relief [was] for money damages," in the district court's view, since "[d]amages are a sum of money used as substitutionary relief," whereas specific relief "is an attempt to give back to the plaintiff that which he actually lost, not a sum measured by the amount of the loss, but the loss itself" (*ibid.*). Turning to the merits, the district court accepted the State's interpretation of the relevant statutes and granted in all respects the relief it requested (*id.* at 15a-22a).

The court of appeals held that the district court lacked jurisdiction and ordered the case transferred to the Claims Court (Pet. App. 1a-10a). It reasoned that the lawsuit, while nominally against the Secretary of the Treasury, was in reality against the United States and hence could not be maintained in the district court absent the government's consent to such suit (*id.* at 4a). The court found a limited waiver of sovereign immunity in 5 U.S.C. 702, which provides that a suit for review of agency action "seeking relief

other tha[n] money damages * * * shall not be dismissed * * * on the ground that it is against the United States." After analyzing the legislative history of that Section, however, the court concluded that Congress did not waive sovereign immunity to district court suits which, "read with a practical eye, * * * involve a claim for money" in excess of $10,000, since a contrary view would "run counter to the Tucker Act's express scheme for monetary claims against the United States" (Pet. App. 6a-7a & n.3, citing 28 U.S.C. 1346, 1491 and H.R. Rep. 94-1656, 94th Cong., 2d Sess. 20-24 (1976)). The court was unpersuaded by the district court's "semantic discussion of the meaning of the word 'damages,' " and followed a long line of cases holding that "when the 'prime objective' or 'essential purpose' of the complaining party is to obtain money from the federal government (in an amount in excess of $10,000), the Claims Court's exclusive jurisdiction is triggered" (Pet. App. 6a, 7a (citing cases)). The court held that the primary thrust of the instant action was for monetary relief and that its equitable aspects were "merely incidental and subordinate to the basic suit for money" (Pet. App. 8a). The court further held (*id.* at 8a-9a) that 28 U.S.C. 1361, which confers mandamus powers upon the district courts, is inapplicable where (as here) the Claims Court can provide appropriate relief, and ordered the case transferred to that court "in the interest of justice" under 28 U.S.C. 1631 (Pet. App. 9a-10a).

ARGUMENT

The only issue presented here concerns the proper federal forum for this litigation. The court of appeals' decision — that the Tucker Act's specific grant of Claims Court jurisdiction prevails over the general grant of federal question jurisdiction in 28 U.S.C. 1331 — is correct. That decision does not conflict with any decision of this Court or of another court of appeals. This Court last Term denied

review of a case presenting a substantially identical question. *Portsmouth Redevelopment & Housing Authority* v. *Pierce*, 464 U.S. 960 (1983). There is no basis for further review here.

Petitioner does not seriously dispute that the Tucker Act would permit the Claims Court to exercise jurisdiction over this case. There can be little doubt that the three requirements for Tucker Act jurisdiction are met. The State seeks a money judgment in excess of $10,000. The State's claim is founded upon federal law. And the claim is "against the United States" because "the judgment sought would expend itself on the public treasury" and would "restrain the Government from acting, or * * * compel it to act." *Dugan* v. *Rank*, 372 U.S. 609, 620-621 (1963) (original quotation marks omitted). What petitioner contends is that the court of appeals erroneously found the Claims Court's jurisdiction to be *exclusive*, thereby rejecting the argument that jurisdiction in the district court could be predicated on 28 U.S.C. 1331 (federal question jurisdiction), 5 U.S.C. 702 (Administrative Procedure Act), or 28 U.S.C. 1361 (mandamus jurisdiction). As the court of appeals correctly pointed out, however, none of those provisions furnishes jurisdiction here.

Section 1331 grants the district courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." But the courts of appeals have repeatedly recognized that the more specific grant of jurisdiction to the Claims Court under 28 U.S.C. 1346(a)(2) and 1491(a)(1) in suits arising under federal law for amounts in excess of $10,000, where applicable, prevails over the general grant of jurisdiction to the district courts in Section 1331. *E.g.*, *Portsmouth Redevelopment & Housing Authority* v. *Pierce*, 706 F.2d 471, 473-475 (4th Cir.), cert. denied, 464 U.S. 960 (1983); *Keller* v. *MSPB*, 679 F.2d 220,

222 (11th Cir. 1982); *Graham* v. *Henegar*, 640 F.2d 732, 734-735 (5th Cir. 1981); *Lenoir* v. *Porters Creek Watershed District*, 586 F.2d 1081, 1087-1088 (6th Cir. 1978). Otherwise, the exclusive jurisdiction of the Claims Court would be largely destroyed because most cases falling within its jurisdiction could also be brought within Section 1331. See *Graham*, 640 F.2d at 734. Indeed, the distinction Congress drew in the Tucker Act between suits for amounts less than, or in excess of, $10,000 would on petitioner's theory be obliterated. Compare 28 U.S.C. 1346(a)(2) with 28 U.S.C. 1491(a)(1).

The courts are likewise in agreement that the exclusive jurisdiction of the Claims Court under 28 U.S.C. 1491(a)(1) cannot be avoided "by framing a complaint to appear to seek only injunctive, mandatory or declaratory relief against government officials when the result would be the equivalent of obtaining of money damages." *B.K. Instrument, Inc.* v. *United States*, 715 F.2d 713, 727 (2d Cir. 1983) (citing cases). Where a complaint seeks both monetary and equitable relief, and the primary objective or essential purpose of the lawsuit is to obtain money under a federal statute from the federal government in excess of $10,000, the Claims Court's jurisdiction is exclusive. *E.g.*, *B.K. Instrument, Inc.*, 715 F.2d at 727; *Portsmouth Redevelopment & Housing Authority*, 706 F.2d at 474; *Keller* v. *MSPB*, 679 F.2d at 222-223; *Hoopa Valley Tribe* v. *United States*, 596 F.2d 435, 436, 443 (Ct. Cl. 1979). The courts have recognized that a district court may retain jurisdiction over an equitable claim where the latter is "paramount." *E.g.*, *Minnesota* v. *Heckler*, 718 F.2d 852, 858-860 (8th Cir. 1983). But "[a] district court does not gain jurisdiction over a Tucker Act claim simply because the complaint couples requests for monetary relief with requests for injunctive relief." *Portsmouth Redevelopment & Housing Authority*, 706 F.2d at 474.

Under these principles, the court of appeals plainly reached the right result here. Petitioner seeks an amount of money equal to the windfall profit tax allocable to its share of Mineral Act royalties, interest on that sum, and a declaration that the Secretary pay those royalties in future free of that tax. As the court below properly concluded, New Mexico's suit is thus "essentially one designed to reach money which the government owns" and to "fix the government's * * * liability" to petitioner with respect to that money (Pet. App. 8a). Accord, *e.g.*, *Hoopa Valley Tribe*, 596 F.2d at 436, 443. Although petitioner's suit has ancillary equitable aspects, it will suffer no deprivation of rights by being routed to the Claims Court. That court is empowered to award declaratory relief that is "tied to and subordinate to a monetary award." *Austin* v. *United States*, 206 Ct. Cl. 719, 723, cert. denied, 423 U.S. 911 (1975). See *United States* v. *Mitchell*, No. 81-1748 (June 27, 1983), slip op. 10 n.15; *Portsmouth Redevelopment & Housing Authority*, 706 F.2d at 474.[1]

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[1]Petitioner errs in asserting (Pet. 7) that "the circuits are badly split" as to the circumstances under which a case should be bifurcated between the Claims Court and the district court, the former taking jurisdiction of the damages claim and the latter retaining jurisdiction of the injunctive and declaratory claims. Petitioner's reliance in this respect on *Minnesota* v. *Heckler*, *supra*, is misplaced. The State there sought declaratory and injunctive relief as to its rights to federal Medicaid funds; although the suit arose from the disallowance of federal funds for costs incurred in three facilities, the Eighth Circuit concluded that the primary object of the lawsuit involved the fundamental question of what was an "institution for mental diseases" under the relevant federal statute--a determination that would affect far more than those three facilities (718 F.2d at 859). The court thus held that jurisdiction of the equitable claims lay in the district court, the monetary claims being transferred to the Claims Court (*id.* at 857-860). Here, by contrast, New Mexico's suit goes no further than to fix the monetary liability of the government to it, and the Claims Court plainly has the power to grant sufficient "equitable relief collateral to a monetary award in order to resolve [the] entire controversy" (*id.* at 858). And while the Eighth Circuit in *Minnesota* v. *Heckler* suggested (718 F.2d at 858 n.11)

Petitioner's position is not improved by its reliance (Pet. 8-10) on 5 U.S.C. 702. Whereas Section 1331 contains no "general waiver of immunity" (*B.K. Instrument, Inc.*, 715 F.2d at 724), Section 702 does waive sovereign immunity in certain suits for judicial review of administrative action. But Section 702 confers no "implied grant of subject-matter jurisdiction to review agency actions" (*Califano* v. *Sanders*, 430 U.S. 99, 105 (1977)). Subject-matter jurisdiction in the district court would have to be predicated here on 28 U.S.C. 1331, and, as we have noted above, Section 1331 must yield to the Tucker Act in cases of this sort. Section 702, moreover, waives sovereign immunity only in actions "seeking relief other tha[n] money damages." Since, as the court below properly held, the instant action is primarily and essentially one for monetary relief, Section 702 has no application here. See, *e.g.*, *B.K. Instrument, Inc.*, 715 F.2d at 726-727.

Equally inapplicable as a source of district court jurisdiction is 28 U.S.C. 1361, which grants the district courts "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States * * * to perform a duty owed to the plaintiff." To begin with, that Section is not an all-purpose waiver of sovereign immunity allowing raids on the United States Treasury. See *Murray* v. *United States*, 686 F.2d 1320, 1325-1326 (8th Cir. 1982), cert. denied, 459 U.S. 1147 (1983); *Estate of Watson* v. *Blumenthal*, 586 F.2d 925, 935 (2d Cir. 1978);

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that "[a] split of authority exists" between those courts (like itself) that use a "primary purpose" test and other courts (like the Eleventh Circuit in *Keller* v. *MSPB, supra*) that supposedly allow the monetary claim to dictate exclusive Claims Court jurisdiction regardless of which claim is primary, the *Keller* court in fact employed a primary purpose analysis (679 F.2d at 223). In any event, the alleged conflict is irrelevant here because under either test the Claims Court would have exclusive jurisdiction of the instant case in its entirety.

Smith v. *Grimm*, 534 F.2d 1346, 1352 n.9 (9th Cir.), cert. denied, 429 U.S. 980 (1976). And even if there were a waiver of sovereign immunity, mandamus jurisdiction is available only where the duty owed the complainant is ministerial and leaves nothing to the discretion of the official involved. *Louisiana* v. *McAdoo*, 234 U.S. 627, 633-634 (1914); *Kendall* v. *United States*, 37 U.S. (12 Pet.) 524, 610 (1838). "[W]here the duty * * * depends upon a statute or statutes the construction or application of which is not free from doubt, it is regarded as involving the character of judgment or discretion which cannot be controlled by mandamus." *Wilbur* v. *United States ex rel. Kadrie*, 281 U.S. 206, 219 (1930) (footnote omitted). That is plainly the situation here.

Finally, it is well settled that mandamus is not available where there exists an adequate remedy at law. *Allied Chemical Corp.* v. *Daiflon, Inc.*, 449 U.S. 33, 35 (1980); *United States ex rel. Girard Trust Co.* v. *Helvering*, 301 U.S. 540, 544 (1937); *Minnesota* v. *Heckler*, 718 F.2d at 859 n.12; *Burgos* v. *Milton*, 709 F.2d 1, 3 (1st Cir. 1983); *Carter* v. *Seamans*, 411 F.2d 767, 773 (5th Cir. 1969), cert. denied, 397 U.S. 941 (1970). New Mexico plainly has an adequate remedy in the Claims Court: that court has the power to fix the government's liability to the State on its monetary claim, and also, if monetary relief is granted, to grant declaratory relief tied to such claim. *United States* v. *Mitchell*, slip op. 10 n.15; *Portsmouth Redevelopment & Housing Authority*, 706 F.2d at 474.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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